

HOUSE BILL 403

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 33;
Title 38; Title 39, Chapter 15, Part 4; Title 39,
Chapter 17; Title 43, Chapter 27; Title 53; Title 67
and Title 68, Chapter 7, relative to cannabis.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, Chapter 27, is amended by adding the following as a new part:

43-27-201.

The purpose of this part is to regulate the sale and distribution of products containing a hemp-derived cannabinoid.

43-27-202.

As used in this part, unless the context otherwise requires:

(1) "Batch" means a single stock keeping unit with common cannabinoid input or a hemp flower of the same varietal and harvested on the same date manufactured during a defined cycle in such a way that it could be expected to be of a uniform character and should be designated as such;

(2) "Department" means the department of agriculture;

(3) "Hemp-derived cannabinoid":

(A) Means:

(i) A cannabinoid other than delta-9 tetrahydrocannabinol, or an isomer derived from such cannabinoid, that is derived from hemp in a concentration of more than one-tenth of one percent (0.1%); or

(ii) A hemp-derived product containing delta-9 tetrahydrocannabinol in a concentration of three tenths of one percent (0.3%) or less on a dry weight basis;

(B) Includes, but is not limited to:

- (i) Delta-8 tetrahydrocannabinol;
- (ii) Delta-10 tetrahydrocannabinol;
- (iii) Hexahydrocannabinol;
- (iv) Tetrahydrocannabinol acetate ester (THCo);
- (v) Tetrahydrocannabiphorol (THCp);
- (vi) Tetrahydrocannabivarin (THCv); and
- (vii) Tetrahydrocannabinolic acid (THCa); and

(C) Does not include:

- (i) Cannabichromene (CBC/CBCa/CBCv);
- (ii) Cannabicitran (CBT/CBTa);
- (iii) Cannabicyclol (CBL/CBLa);
- (iv) Cannabidiol (CBD/CBDa/CBDv/CBDp);
- (v) Cannabielsoin (CBE/CBEa);
- (vi) Cannabigerol (CBG/CBGa/CBGv/CBGm);
- (vii) Cannabinol (CBN/CBNa);
- (viii) Cannabivarin (CBV/CBVa);
- (ix) Hemp-derived feed products allowed under title 44, chapter 6;

or

- (x) Hemp-derived fiber, grain, or topical products;

(4) "Manufacture" means to compound, blend, extract, infuse, cook, or otherwise make or prepare products containing a hemp-derived cannabinoid, including the

processes of extraction, infusion, packaging, repackaging, labeling, and relabeling of products containing a hemp-derived cannabinoid;

(5) "Producer" means a person or entity that manufactures hemp-derived cannabinoids or sells products containing hemp-derived cannabinoids to retailers;

(6) "Proof of age" means a valid driver license or other government-issued identification card that contains a photograph of the person and confirms the person's age as twenty-one (21) years of age or older;

(7) "Retailer" means a person or entity that sells products containing a hemp-derived cannabinoid for consumption and not for resale;

(8) "Serving" means a quantity of a hemp-derived cannabinoid product reasonably suitable for a single person's daily use; and

(9) "THC" means tetrahydrocannabinol.

43-27-203.

(a) It is an offense for a person to knowingly sell or distribute a product containing a hemp-derived cannabinoid to a person who is under twenty-one (21) years of age or to purchase a product containing a hemp-derived cannabinoid on behalf of a person who is under twenty-one (21) years of age.

(b) It is an offense for a person to knowingly persuade, entice, send, or assist a person who is under twenty-one (21) years of age to purchase, acquire, receive, or attempt to purchase a product containing a hemp-derived cannabinoid. This section and § 43-27-204 do not preclude law enforcement efforts involving:

(1) The use of a minor if the minor's parent or legal guardian has consented to this action; or

(2) The use of a person under twenty-one (21) years of age who is not a minor if the individual has consented to this action.

(c) It is an offense to knowingly distribute samples of products containing a hemp-derived cannabinoid in or on a public street, sidewalk, or park.

(d) It is an offense to knowingly sell or distribute a product containing a hemp-derived cannabinoid without having first obtained proof of age from the purchaser or recipient.

(e) A violation of this section is a Class A misdemeanor.

43-27-204.

(a) It is an offense for a person who is under twenty-one (21) years of age to knowingly purchase, possess, or accept receipt of a product containing a hemp-derived cannabinoid or to knowingly present purported proof of age that is false, fraudulent, or not actually that person's for the purpose of purchasing or receiving a product containing a hemp-derived cannabinoid.

(b) A violation of subsection (a) is a Class A misdemeanor.

43-27-205.

(a) As used in this section:

(1) "Counter" means the point of purchase at a retail establishment; and

(2) "Retail establishment" means a place of business open to the general public for the sale of goods or services and does not include a place of business for which entry is limited to persons twenty-one (21) years of age or older.

(b) Any product containing a hemp-derived cannabinoid shall be maintained behind the counter of a retail establishment in an area inaccessible to a customer.

(c) A violation of this section is a Class A misdemeanor.

43-27-206.

(a) The department of agriculture shall enforce this part in a manner that may reasonably be expected to reduce the extent to which products containing a hemp-

derived cannabinoid are sold or distributed to persons under twenty-one (21) years of age, and shall conduct random, unannounced inspections at locations where such products are sold or distributed to ensure compliance with this part.

(b) The department shall submit an annual report to the general assembly describing in detail the department's enforcement efforts under this part. The report must also be published and made available to the public on the department's website.

43-27-207.

(a) Notwithstanding the Retailers' Sales Tax Act, compiled in title 67, chapter 6, for the exercise of the privilege of engaging in the business of selling products containing a hemp-derived cannabinoid in this state, there is levied an additional tax at the rate of five percent (5%) of the sales price of products containing a hemp-derived cannabinoid when sold at retail in this state.

(b) The tax levied under this section is due and payable monthly on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this section, it shall be the duty of all retailers making taxable sales on or before the twentieth day of each month to transmit to the commissioner of revenue, upon forms prescribed by the commissioner, returns showing gross sales during the preceding month.

(c) All revenue generated from the tax levied pursuant to subsection (a) must be deposited into a special account in the state general fund and allocated to the department of agriculture to be used exclusively for the regulation of products containing a hemp-derived cannabinoid in this state.

43-27-208.

(a) A person or entity that is in the business of manufacturing or selling products containing a hemp-derived cannabinoid in this state, including as a producer or retailer, must obtain a license from the department authorizing the person or entity to engage in

that business prior to the commencement of business or by January 1, 2024, whichever is later.

(b)

(1) In order to obtain and maintain a producer or retailer license under subsection (a), a person must:

(A) Submit to the department information prescribed by rules as necessary for the efficient enforcement of this part;

(B) Pay to the department a fee of five hundred dollars (\$500) for producers or two hundred fifty dollars (\$250) per retailer per location; and

(C) Consent to reasonable inspection and sampling by the department of the person's inventory of products containing a hemp-derived cannabinoid.

(2) A person is not eligible to obtain or maintain a producer or retailer license while serving a sentence for, or for ten (10) years following completion of a sentence for, a drug-related felony offense in any state or federal jurisdiction.

(c) A license issued pursuant to this section is valid for a period of one (1) year and may be renewed annually. The department shall charge an annual renewal fee equal to the initial licensing fee.

(d) The department is authorized to:

(1) Determine requirements for and issue licenses for the production of hemp in this state and for the manufacture or sale of products containing a hemp-derived cannabinoid in this state;

(2) Deny or revoke licenses and issue civil penalties up to one thousand dollars (\$1,000) for each violation of this part or rules promulgated pursuant to this part, in addition to the criminal prosecution authorized by this part; and

(3) Promulgate rules to effectuate the purposes of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) The revenue collected from fees established under subdivision (b)(1)(B) must be deposited in the Tennessee agriculture regulatory fund, created by § 43-1-701, and used exclusively for the administration of this part.

43-27-209.

(a) It is an offense for a person or entity to engage in the business of manufacturing, producing, or selling products containing a hemp-derived cannabinoid in this state without a valid license required by this part.

(b) A violation of subsection (a) is a Class A misdemeanor. A product containing a hemp-derived cannabinoid that is sold or offered for sale in violation of subsection (a) is subject to seizure and forfeiture.

43-27-210.

(a) A product containing a hemp-derived cannabinoid must be tested after being manufactured to determine the presence and amounts of the following:

- (1) Cannabinoids;
- (2) Heavy metals;
- (3) Microbials;
- (4) Mycotoxins;
- (5) Pesticides; and
- (6) Residual solvents.

(b) A producer or retailer must contract with a third-party laboratory to provide the testing required by subsection (a). A third-party laboratory performing such testing must be ISO 17025 accredited and be registered with the United States drug enforcement agency.

(c) Each batch manufactured must undergo testing and obtain a certificate of analysis by a third-party laboratory qualified under subsection (b).

(d) The department shall:

(1) Promulgate rules specifying pass/fail action levels for safety and toxicity with respect to the testing required by subsection (a);

(2) Maintain and post on its website a registry of testing laboratories that are qualified to test intermediate manufactured material and finished products containing a hemp-derived cannabinoid; and

(3) Develop an application and process by which qualifying laboratories are listed on its website. The application submitted by a potentially qualifying laboratory must include a sample certificate of analysis issued by the applying laboratory.

(e) An expiration date on the label of a product containing a hemp-derived cannabinoid must be no more than one (1) year from the date of publication of the product's laboratory testing report required by subsection (a).

43-27-211.

(a) A product containing a hemp-derived cannabinoid that is sold at retail must:

(1) Satisfy the child-resistant effectiveness standards under 16 CFR 1700.15(b)(1) when tested in accordance with the requirements of 16 CFR 1700.20; and

(2) Be labelled with:

(A) A list of ingredients and possible allergens and a nutritional fact panel;

(B) The words "CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CERTAIN

CANNABINOIDS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE
HEAVY MACHINERY. PLEASE USE EXTREME CAUTION.";

(C) A statement that the product is not approved for any medical
use by the United States food and drug administration;

(D) The words "KEEP OUT OF REACH OF CHILDREN.
CONSULT YOUR PHYSICIAN BEFORE USE IF YOU ARE PREGNANT,
BREASTFEEDING, OR TAKING ANY MEDICATIONS.";

(E) If the product is ingestible, the amount of cannabinoid in each
serving of the product, measured in milligrams;

(F) The total amount of hemp-derived cannabinoid in the entire
package, measured in milligrams;

(G) The net weight of the product;

(H) A code that can be scanned to access a website providing the
product's batch number, date received, date of completion, and method of
analysis for the testing report required under § 43-27-210; and

(I) An expiration date.

(b) A retailer or producer of a product containing a hemp-derived cannabinoid
shall not advertise, market, or offer for sale a product containing a hemp-derived
cannabinoid by using, in the labeling or design of the product or product packaging or in
advertising or marketing materials for the product trade dress, trademarks, branding, or
other related imagery or scenery that depicts or signifies characters or symbols known to
appeal primarily to persons under twenty-one (21) years of age, including, but not limited
to, superheroes, comic book characters, video game characters, television show
characters, movie characters, mythical creatures, and unicorns.

(c) An ingestible product containing a hemp-derived cannabinoid shall not:

- (1) Be sold in a serving that contains more than twenty-five (25) milligrams, in the aggregate, of one (1) or more hemp-derived cannabinoids; or
- (2) Be formed into the shape of an animal or cartoon character.

43-27-212.

(a) This part does not permit a person to:

- (1) Undertake any task under the influence of a hemp-derived cannabinoid when doing so would constitute negligence or professional malpractice; or
- (2) Operate, navigate, or be in actual physical control of a motor vehicle, aircraft, motorized watercraft, or any other vehicle while under the influence of a hemp-derived cannabinoid.

(b) This part does not require:

- (1) An employer to accommodate the use of a hemp-derived cannabinoid in a workplace or an employee working while under the influence of a hemp-derived cannabinoid;
- (2) An individual or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use a hemp-derived cannabinoid on or in that property; or
- (3) An individual or establishment in lawful possession of property to admit a guest, client, customer, or other visitor who is impaired as a result of the person's use of a hemp-derived cannabinoid.

(c) This part does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from use of a hemp-derived cannabinoid or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.

(d) This part does not:

(1) Limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy;

(2) Create a cause of action against an employer for wrongful discharge or discrimination; or

(3) Allow the possession, sale, manufacture, or distribution of any substance that is otherwise prohibited by title 39, chapter 17, part 4.

SECTION 2. For purposes of promulgating rules or forms, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes:

(1) Sections 43-27-202, 43-27-203, and 43-27-204 take effect July 1, 2023, the public welfare requiring it; and

(2) The remainder of this act takes effect January 1, 2024, the public welfare requiring it.